

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12863 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DALICHAND ALIAS BHURIYO PANNALAL LABANNA

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner
MR SAMIR DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/02/2001

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The petitioner was detained as a dangerous person under the order of the Commissioner of Police, Ahmedabad

City dated 1.6.2000 and he is presently at Junagadh Jail, Junagadh.

#. Challenging this order aforesaid learned counsel for the petitioner raised manifold contentions. But this petition deserves acceptance only on one contention it is not necessary to give details of all the contentions, discuss and decide.

#. It is not in dispute that none of the respondents has filed reply to the Special Civil Application.

#. It is contended that the statement of the secrete witnesses were recorded on 30.5.2000, verified on 31.5.2000 and order of detention has been made on 1.6.2000. Only on this ground the detention order vitiates. It is a case in which the detaining authority is made use of both registered and unregistered cases against the petitioner for his detention as a dangerous person. The last case was registered against the petitioner on 28.2.2000 and in which he has been released on bail. This detention order is passed on 1.6.2000 and there is delay of about 3 months which is not explained by the respondents in the order of detention or even by filing reply to the Special Civil Application. Not only this the statement of secrete witnesses were verified on 31.5.2000 and on the very next day this order has been passed. This has also not been explained by the respondents either in the order of detention or by filing the reply to the Special civil Application. From this fact, I am satisfied that after the proposal the detaining authority has no time to verify about the genuineness and correctness of the statements of those witnesses.

#. So, taking into consideration this matter either from ground of undue long delay in passing of the detention order or the order is passed on the very next day of verifying the statements of witnesses by the detaining authority, the continued detention of the petitioner is illegal.

In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 1.6.2000 is quashed and set aside. The petitioner Dalichand @ Bhuriyo Pannalal Labanna, the detenu, at present in Junagadh Jail, Junagadh be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The respondent State of Gujarat is directed to pay Rs.2,000= as the costs of this

petition to the petitioner.

#. The learned counsel for the respondent strongly opposed awarding of the cost of this litigation to the petitioner by the court. Firstly it is the discretion of the court to award the costs. So, there is a little scope for raising such objection by the learned counsel for the respondent. Otherwise also I consider it to be a fit case to award the costs. The learned counsel for the petitioner made a statement on being put by the court that he has charged Rs.2,000/= as a fees from the petitioner to provide him his professional services in this case and this amount has been paid by the petitioner to him. It is the question of the personal liberty and the petitioner is free to engage any advocate of his own choice. Nobody can compel the petitioner nor any law which required that he has to engage an advocate which charge lesser fees. The advocate is a professional and if any body approach to him to provide his professional services he can charge his own fees. This is not only money which has been spent by the petitioner but in addition to this he would have spent money for typing charges, court fees and other misc. expenses for filing of the petition but the counsel for the petitioner has not produced any bill of expenses and as such that amount cannot be awarded to the petitioner.

#. The State of Gujarat an impersonal machinery is not at fault in the matter. Its only fault is that it has no control over its officers or it has not taken its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officer the reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer it is a peoples' money. This money has to be paid to the petitioner by the State of Gujarat for not of its own fault but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter and whosoever is found responsible for not filing the reply in the matter on the inquiry this amount of the cost is to be recovered from him. This inquiry is to be completed within a period of six months from the date of the receipt of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and the officers who are found negligent, careless and unmindful in discharging of their duties as a result of which the State of Gujarat

has to suffer monetary loss and that amount is not recovered from those officers its House may not be corrected.

(S.K.Keshote, J.)

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